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No. 92-292

In The

Supreme Court of the United States

October Term, 1992

RONALD KOLODZIECZAK, et al.,

Petitioners,

vs.

JACK WAYNE FRIEND, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Is a plaintiff class of county jail inmates who obtain and secure access to Roman Catholic religious services, sacraments and religious articles within a jail a prevailing party for purposes of an award of attorneys' fees pursuant to 42 U.S.C. § 1988?

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STATEMENT OF THE CASE

Respondents are members of a plaintiff class of jail inmates at the Alameda North County jail in Oakland, California. Respondents are inmates of the Roman Catholic faith. They filed suit *in pro per* in 1987[1] contending that county officials had denied them access to religious services, sacraments and religious articles (rosaries and scapulars), while at the same time allowing a Protestant fundamentalist group to control religious activities within the North County jail.

The lawsuit had two primary objectives. First, respondents attempted to obtain and secure access to religious services by having jail officials provide them the opportunity for separate services distinct from the Protestant group. They also sought the opportunity to participate in communion and confession. Second, respondents sought the opportunity to possess sacramental articles, rosary beads and scapulars, at all times.

The First Amended Complaint prepared by counsel alleged that

> The confiscation and continuing retention of plaintiffs' rosary beads and scapulars, defendants' practice and policy of prohibiting inmates of the Alameda North County Jail from possessing rosary beads and scapulars, and defendants' failure to provide plaintiffs with access to Roman Catholic religious services and sacraments

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[1] The complaint was prepared and signed in 1986. But the district court did not grant *in forma pauperis* status and order it served until 1987. Order, filed September 17, 1987; R. 3.

violate the Free Exercise Clause of the First Amendment.[2]

Moreover, the First Amended Complaint alleged that

> Defendants' failure to provide for scheduled Roman Catholic masses or scheduled visits by a Roman Catholic priest while arranging for services held by Protestants

violates the right to equal protection of the law.

First Amended Complaint, paras. 44 and 46.

The prayer sought declaratory and injunctive relief prohibiting confiscation of the rosaries and scapulars and

> requiring defendants to arrange for and provide effective and meaningful opportunities for Roman Catholic prisoners to attend mass and participate in the sacraments of communion and confession within the North County Jail.

First Amended Complaint, Prayer, paras. 3 and 4.

When the lawsuit was filed, the Jail Policy Manual contained no provisions for Roman Catholic services or sacraments, and it said nothing about the opportunity to possess rosaries and scapulars during religious services. See, Exhibit G to Appendix to Petition for a Writ of Certiorari, "Section III 5-15, Religious Services." Indeed, there were no services; there were no suitable opportunities for communion and confession; and rosaries were confiscated.

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[2] Petitioners inexplicably failed to include a copy of the First Amended Complaint in the Appendix to the Petition for a Writ of Certiorari. A true copy is included in the Appendix to this Brief.

The district court certified a class consisting of "all Roman Catholic inmates who are now or will be incarcerated in the Alameda North County Jail." Exhibit E to Appendix to Petition for a Writ of Certiorari.

Subsequently, the parties engaged in extensive discovery, which culminated in cross-motions for summary judgment. By the date of the summary judgment hearing, the defendants had voluntarily cured many of the religious access issues. For example, as a result of the litigation, named plaintiff Jack Wayne Friend met privately with a priest and participated in confession for the first time since his incarceration in October, 1984. (Declaration of Eugene J. Stelly, Sr. in Support of Plaintiffs' Motion for Summary Judgment, paras. 34-35; R. 60.) At his deposition the jail captain produced a letter dated September 15, 1988, announcing that "effective immediately" separate Roman Catholic services would be held in the jail. (Exhibits D and E to Declaration of Sue Ochs in Support of Plaintiffs' Motion for Attorneys' Fees; R. 90.) The first separately identified Roman Catholic worship services took place in the jail on October 9, 1988 – two weeks before the cross-motions for summary judgment were to be heard. Exhibit Q to Petition for a Writ of Certiorari, Transcript of Hearing, October 24, 1988, at Q-3.

At the hearing, the district court explored with the parties the necessity for a definitive ruling on the cross-motions in light of the changes in the jail. After hearing from the parties, the court ordered them to attempt finally to resolve the dispute by

> reduc[ing] to writing the policy with respect to separate location and a specific time for services for Catholic inmates, and the type of place

> where that – where those services will be held, and those who will be given access to the jail for the purpose of conducting those services, and the other items, sacraments and so forth. That – and items for those sacraments that will be permitted in the services, that . . . the policy with respect to a place for confession be reduced to writing.

Exhibit Q to Petition for Writ of Certiorari, Transcript of Hearing, October 24, 1988, at Q-8.

Petitioners implemented the policy changes pertaining to religious access. However, they asked the district court to rule on the summary judgment motions solely with respect to the possession of rosaries and scapulars. On September 29, 1989, the district court granted petitioners' motion, holding that jail officials can prohibit unfettered possession of rosaries and scapulars. Exhibit F to Petition for a Writ of Certiorari. But the court ordered petitioners, as a condition of final dismissal of the lawsuit, to submit a final written policy addressing the religious access issues, which had been previously resolved. Petitioners submitted a revised written policy, securing the rights of the class of Roman Catholic inmates in connection with services, sacramental acts, and possession of rosaries and scapulars during services. As the court of appeals recognized in its first opinion in this case:

> The defendants' alleged failure to grant the plaintiffs access to Roman Catholic services and sacraments was no longer in issue, because the defendants scheduled a regular time and location for Roman Catholic services, promulgated

> rules allowing inmates an opportunity to participate in the Roman Catholic sacraments of confession and communion, and established a policy allowing inmates to use rosaries and wear scapulars during religious services and meetings with religious visitors.

Friend v. Kolodzieczak, 923 F.2d 126, 127 (9th Cir. 1991); Exhibit B to Appendix to Petition for a Writ of Certiorari.

The new Operational Order No. 1, which is the result of this lawsuit, provides, in part:

* Purpose: To insure inmates are afforded the opportunity of religious worship.

* Separate Catholic services will be allowed each Sunday between the hours of 7:30 to 9:30 a.m. in the multipurpose room on any floor . . . and Monday evenings, 7:30 p.m. to 9:30 p.m.. . . .

* When an inmate notifies staff that he desires to practice his religion and requests to be administered to by his faith's practitioner, . . . staff shall make reasonable efforts to accommodate the request. . . . If the inmate does not identify a particular practitioner, staff will attempt to contact the religious body involved. [In the case of Catholic inmates, staff will contact Catholic Charities, Diocese of Oakland.]

* When an inmate's religious practice calls for a private consultation with his religious practitioner, staff shall make every reasonable effort to make an area available for this purpose and shall use reasonable efforts to

> assure the privacy of the consultation. A private consultation includes, but is not limited to, an inmate's confession to his practitioner.
>
> * Religious items allowed only during religious services are those which present only a moderate security threat. Examples include a rosary or a scapular. . . .

See, Exhibit H to Appendix to Petition for a Writ of Certiorari (footnote omitted, brackets in original).

Following receipt of the new policy, the district court dismissed the case. Respondents appealed solely with respect to the possession of rosaries and scapulars outside religious services. The court of appeals affirmed. *Friend v. Kolodzieczak*, 923 F.2d 126 (9th Cir. 1991); Exhibit B to Appendix to Petition for a Writ of Certiorari.

Respondents moved the district court for an award of attorneys' fees and costs pursuant to 42 U.S.C. § 1988 for the time expended in connection with issues upon which the class had prevailed. They did not seek fees solely related to the issues that were adversely decided on appeal, including any compensation for the first appeal. (Plaintiffs' Memorandum in Support of Motion for Attorneys' Fees; R. 88.)

Since respondents had engaged in extensive discovery and briefed all issues in preparation for the motion for summary judgment, they asked the district court to compensate them for all work reasonably expended on the religious access issues, except time spent solely on the rosary and scapular questions. The district court performed the analysis required by *Hensley v. Eckerhart*, 461

U.S. 424 (1983) and awarded fees and costs in the amount of $93,782.72. Exhibit J to Petition for a Writ of Certiorari.

Petitioners appealed the award of fees and costs. The appeal only raised the issue of entitlement to the award. Petitioners did not directly challenge the amount awarded.[3]

A divided court of appeals affirmed, applying the settled principle that "a party may recover its attorney's fees if it 'succeed[s] on any significant issue in litigation which achieves some of the benefit . . . sought in bringing suit.' " *Friend v. Kolodzieczak*, 965 F.2d 682, 684 (9th Cir. 1992); Exhibit A to Appendix to Petition for a Writ of Certiorari. "The district court concluded correctly that the pre-litigation settlement materially altered the legal relationship of the parties: This is '[t]he touchstone of the prevailing party inquiry.' " *Id.* at 685 (citing, *Texas State Teachers Assn. v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 792-93 (1989)). The petition for a writ of certiorari to this Court followed.

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[3] As the court of appeals recognized: "Alameda County officials argue that the attorney's fees awarded here are excessive as a matter of law. The officials do not argue that the district court calculated the fee amount improperly. Instead, they merely contend that the inmates did not achieve their goals. This argument simply restates their objection to the district court's finding that the class of inmates is a prevailing party within the meaning of 42 U.S.C. § 1988." *Friend v. Kolodzieczak* 965 F.2d 682, 685, n. 7 (9th Cir. 1992); Exhibit A to Petition for Writ of Certiorari. Thus, issues with respect to the third question presented by petitioners were not properly preserved in the court below.

REASONS FOR DENYING THE WRIT

The court of appeal applied settled law in making its determination that respondents prevailed in this class action. *Texas State Teachers Assn. v. Garland Indep. Sch. Dist.*, 489 U.S. 782 (1989) and *Hewitt v. Helms*, 482 U.S. 755 (1987) provide the governing principles. The only dispute between the majority of the court of appeals and the dissenting judge and petitioners is a controversy over the facts underlying the prevailing party analysis. Indeed, the "Questions Presented" by the petitioners are so fact-specific that they fail to identify any unsettled principle of law. Moreover, the dissenting judge of the court of appeals applied exactly the same legal principles as the majority, relying on *Texas State Teacher's Association* and *Sablan v. Department of Finance of N. Mariana Islands*, 856 F.2d 1317 (9th Cir. 1988). But the dissent saw the facts differently. 765 F.2d at 686-691; Exhibit A to Petition for a Writ of Certiorari at A-8 – A-19.

The petition lists three grounds for granting the writ. First, petitioners claim that the case calls "for the exercise of this Court's power of supervision." Petition for a Writ of Certiorari at 2. But resolution of factual disputes is the province of the district courts and courts of appeals.

> A court of law, such as this Court is, rather than a court for correction of errors in factfinding, cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error.

Graver Mfg. Co. v. Linde Co., 336 U.S. 271, 275 (1949). The "two-court rule" is fully applicable in this case. *See, Goodman v. Lukens Steel Co.*, 482 U.S. 656, 665 (1987); *United States v. Reliable Transfer Co.*, 421 U.S. 387 (1985).

As an institution this Court does not have the resources to "supervise" the lower courts except in rare instances in which such supervision addresses a recurring administrative issue of national importance. *Compare, McNabb v. United States*, 318 U.S. 332 (1943). This is especially appropriate in attorneys' fees cases "in view of the district court's superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983).

Second, the petitioners contend that "The federal question decided on the issue of attorneys' fees in this case conflicts with the decisions of other United States Courts of Appeals and with decisions of this Court." *Id.* at 2. But petitioners fail to cite any directly conflicting decisions of any other court of appeals or explain how the decision conflicts with opinions of this Court. Third, the petitioners submit that the petition raises important issues of federal law. This ground is simply a reiteration of the claim that the Court should exercise supervisory powers.

Although petitioners claim that the attorneys' fees award intrudes on their ability to operate their jail, the award does nothing of the sort. Petitioners, themselves, wrote the new jail policy that secures the rights of the respondent class of jail inmates. Petitioners voluntarily settled the aspects of the case for which fees and costs

were awarded. Petitioners were not required to settle; in fact, they adamantly refused to settle on the rosary/scapular issues and were vindicated on those issues by the same district court which they accuse in the Petition of forcing them to settle. Petition for a Writ of Certiorari at 6. Petitioners' claim that the attorneys' fees award intrudes on the administration of the jail (*id.* at 7) is plainly an "exaggerated response," because the fee award itself does not intrude on jail administration. *Turner v. Safley*, 482 U.S. 78, 90 (1987).

Petitioners refer to the fact that this Court has granted certiorari in *Farrar v. Hobby*, No. 91-990, (U.S. Feb 24, 1992), involving the award of attorneys' fees following a judgment for nominal damages. Petition for Writ of Certiorari at 7. *Compare, Estate of Farrar v. Cain*, 941 F.2d 1311 (5th Cir. 1991), *cert. granted*, 60 U.S.L.W. 3578 (U.S. Feb 24, 1992) (No. 91-990), *with, Ruggiero v. Krzeminski*, 928 F.2d 558 (2d Cir. 1991). However, the question presented in *Farrar* involves an award of attorney's fees following a nominal damages judgment. In this case, the issues involve resolution of a class action lawsuit seeking injunctive relief. Most importantly, the alteration in the relationship between the jail officials and the plaintiff class of Roman Catholic inmates was neither *de minimis* nor a mere technical victory. It had practical consequences for present and future members of the class.

Since this Court's decision in *Maher v. Gagne*, 448 U.S. 122, 129 (1980), it has been settled that "Nothing in the language of § 1988 conditions the District Court's power to award fees on full litigation of the issues or on a judicial determination that the plaintiff's rights have been violated."

> It is settled law, of course, that relief need not be judicially decreed in order to justify a fee award under § 1988. A lawsuit sometimes produces voluntary action by the defendant that affords the plaintiff all or some of the relief he sought through a judgment – e.g., a monetary settlement or a change in conduct that redresses the plaintiff's grievances. When that occurs, the plaintiff is deemed to have prevailed despite the absence of a formal judgment in his favor.

Hewitt v. Helms, 482 U.S. 755, 759-60 (1987). Where equitable relief is sought, a change in the "behavior of the defendant toward the plaintiff" is all that is required. *Rhodes v. Stewart*, 488 U.S. 1, 4 (1989). See, *Texas State Teachers Assn. v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 792-93 (1989).

Accordingly, the changes accomplished on behalf of the plaintiff class in this case were sufficient to support the award of attorneys' fees and costs. In the context of this case – in which equitable relief was sought, the relation between the parties changed and the respondents have and will receive the benefit of the changes – there is no unsettled legal principle warranting review by the Court.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JACK WAYNE FRIEND, on behalf of himself and all others similarly situated, JEFFREY DEE GRAY, and MICHAEL WETHERN, Plaintiffs, vs. RONALD KOLODZIECZAK, CHARLES PLUMMER, Sheriff of Alameda County; MORRIS L. HICKERSON, Captain of Alameda North County Jail, DEAN COMPTON, Deputy for Prisoners' Affairs-Inmate Services Officer; HAROLD ESTES, R.A. FRIST, CHUCK GREEN, A. THEOBALD, and COUNTY OF ALAMEDA, Defendants.	NO. C 87-0161 MHP CLASS ACTION FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND DAMAGES DEMAND FOR JURY TRIAL (Filed Sept. 17, 1987)

INTRODUCTION

1. This is a class action complaint for injunctive and declaratory relief and individual damages arising from the refusal of the Alameda County Sheriff's Department and Officials of Alameda County to allow plaintiffs the opportunity to exercise their constitutionally protected right to practice their religion at the North Alameda County Jail in Oakland, California. Plaintiffs allege that defendants deny plaintiffs and the proposed class the opportunity to attend Roman Catholic religious services and to participate in religious sacraments performed by a Roman Catholic priest. Plaintiffs further allege that defendants prohibit the possession of scapulars and rosary beads, sacramental articles of the Roman Catholic faith. Plaintiffs allege that their rights under the United States Constitution and the California Constitution and laws have been and continue to be violated.

JURISDICTION

2. This case is brought pursuant to 42 U.S.C. § 1983 with pendent state claims. Therefore jurisdiction is based upon 28 U.S.C. §§ 1331 and 1343. This court also has pendent jurisdiction over the state claims.

PARTIES

3. Plaintiff JACK WAYNE FRIEND is a pre-trial detainee of the County of Alameda. He has been incarcerated at the North County Jail in Oakland since October 1984, awaiting trial on charges of felony murder with

special circumstances. Plaintiff could face a sentence of death if he is found guilty.

4. Plaintiff JEFFREY DEE GRAY is and was at relevant times a prisoner of the County of Alameda incarcerated at the North County Jail in Oakland.

5. Plaintiff MICHAEL WETHERN was a prisoner of the County of Alameda incarcerated at the North County Jail in Oakland. He is currently incarcerated at San Quentin State Prison in San Quentin, California.

6. The COUNTY OF ALAMEDA is a political subdivision of the State of California with the capacity to sue and be sued and is also a "person" for purposes of 42 U.S.C. § 1983, because the allegations herein are based on its policies, customs and practices.

7. CHARLES PLUMMER is the Sheriff of Alameda County, and is responsible for establishing the policies and practices of its jails, including the North County Jail. He is further responsible for the direction and supervision of its subordinate officials and employees, including officials and employees of the North County Jail.

8. MORRIS L. HICKERSON is the Captain of Detention and Corrections Division – Alameda North County Jail, and is responsible for the administration of the North County Jail, including the establishment of its policies and practices, and for the supervision and control of all its employees.

9. DEAN COMPTON is the Deputy for Prisoner Affairs-Prisoner Services Officer at the Alameda North

County Jail and is responsible for receiving and responding to inmate requests for religious counselling, visits, sacraments or services.

10. Defendants KOLODZIECZAK, ESTES, GREEN, FRIST and THEOBALD are all employees of the Alameda County Sheriff's Department, who were at times relevant herein, officers at the North County Jail. Each ordered, authorized or performed the confiscation or retention of personal religious articles from plaintiffs FRIEND, GRAY, or WETHERN.

11. At all times mentioned herein, the defendants, and each of them, were employees of the Alameda County Sheriff's Department and the COUNTY OF ALAMEDA.

CLASS ACTION ALLEGATIONS

12. This action is maintainable as a class action under Federal Rules of Civil Procedure 23 (a) and (b) (1)-(2).

13. Plaintiff JACK WAYNE FRIEND brings this action for declaratory and injunctive relief on behalf of himself and all other Roman Catholic prisoners who are or will be incarcerated in the Alameda North County Jail. The class is so numerous that joinder of all members is impracticable. There are questions of law and fact common to the class, the claims of the named plaintiff is typical of the claims of the class, and the named plaintiff will fairly and adequately represent the interests of the class. Additionally, the prosecution of separate actions by individual members of the class would create the risk of

inconsistent adjudications which would establish incompatible standards of conduct for defendants. Defendants have acted and continue to act on grounds generally applicable to all members of the proposed class, thereby making declaratory and injunctive relief appropriate with respect to the class as a whole.

FACTS

14. At all times mentioned herein, defendants and each of them were acting under color of state law and in furtherance of and accordance with the policies and practices of defendants COUNTY OF ALAMEDA, CHARLES PLUMMER, and MORRIS L. HICKERSON.

15. Plaintiffs JACK WAYNE FRIEND and MICHAEL WETHERN are members and practitioners of the Roman Catholic faith. Plaintiffs' religious beliefs are sincerely held.

DENIAL OF THE RIGHT TO POSSESS ROSARY BEADS AND SCAPULARS

16. The use of rosary beads and the wearing of a cloth scapular are an integral part of plaintiffs' practice and expression of their faith and are long-held traditions of Roman Catholicism.

17. Rosary beads are used to count prayers while praying.

18. Scapulars are symbols of Mary, the mother of Jesus. For Roman Catholics such as plaintiffs JACK WAYNE FRIEND and MICHAEL WETHERN, the wearing

of the scapular invokes the protection of Mary and the promise of salvation and eternal life.

19. It is the policy of defendants COUNTY OF ALAMEDA, CHARLES PLUMMER, and MORRIS L. HICKERSON, and the practice of all defendants to prohibit prisoners in the North County Jail from possessing rosary beads and cloth scapulars, and to confiscate such items from prisoners when they are discovered to possess them.

20. In July 1986, the rosary of plaintiff JEFFREY DEE GRAY was confiscated by defendant A. THEOBALD. Defendant CHUCK GREEN refused plaintiff's request to return the beads based on the order of defendant HAROLD ESTES.

21. In July 1986, the rosary of plaintiff MICHAEL WETHERN was confiscated by defendant FRIST. Plaintiffs are informed and believe, and therefore allege on information and belief, that defendant RONALD KOLODZIECZAK ordered the confiscation after plaintiff WETHERN showed defendant KOLODZIECZAK his rosary beads in the course of a discussion concerning a grievance plaintiffs MICHAEL WETHERN and JACK WAYNE FRIEND had filed on behalf of plaintiff JEFFREY DEE GRAY concerning the confiscation of plaintiff GRAY'S rosary beads.

22. In July 1986, during a cell check by North Alameda County jail employees, the rosary of plaintiff JACK WAYNE FRIEND disappeared.

23. In confiscating the rosary beads of plaintiffs JACK WAYNE FRIEND, MICHAEL WETHERN, and

JEFFREY DEE GRAY, defendants were acting pursuant to the official policy of defendants COUNTY OF ALAMEDA, CHARLES PLUMMER and MORRIS L. HICKERSON.

24. The rosary beads possessed by plaintiffs and confiscated by defendants were plastic beads strung on either narrow gauge soft fiber or plastic string.

25. Plaintiffs are informed and believe, and therefore allege on information and belief, that possession of plastic rosary beads by inmates of the Alameda North County Jail poses no threat to the safety of plaintiffs, other inmates or employees of the Sheriff's Department and confiscation of these articles is not related to any important legitimate penological interest.

26. In May, 1986, plaintiff JACK WAYNE FRIEND'S scapular was confiscated by an officer with the initials "D.H." and badge number 4007. On or about September 7, 1986, plaintiff's request for the return of his scapular were denied. The explanation given was "not allowed to have at NCJ per Sgt."

27. In November 1987, plaintiff JEFFREY DEE GRAY requested the return of his scapular so he could have it with him during his trial. His request was denied and the explanation given was "[s]orry we are not allowed to issue scapulars, rosarys [sic], or other items like that to inmates."

28. In confiscating the scapulars of plaintiffs JACK WAYNE FRIEND and JEFFREY DEE GRAY, defendants were acting pursuant to the official policy of defendants

COUNTY OF ALAMEDA, CHARLES PLUMMER and MORRIS L. HICKERSON.

29. The cloth scapulars possessed by plaintiffs and confiscated by defendants consist of two small religious pictures attached to cloth string, worn over the shoulders, one picture in front, and one in back. Plaintiffs wore their scapulars under their clothing.

30. Plaintiffs are informed and believe, and therefore allege on information and belief, that wearing cloth scapulars beneath the clothing poses no threat to the safety of plaintiffs, other inmates or employees of the Sheriff's Department and the prohibition of this practice is not related to any important legitimate penological interest.

DENIAL OF ACCESS TO SCHEDULED ROMAN CATHOLIC SERVICES AND ROMAN CATHOLIC SACRAMENTS

31. Defendants COUNTY OF ALAMEDA, CHARLES PLUMMER, MORRIS L. HICKERSON, and DEAN COMPTON arrange for, provide, facilitate and permit weekly scheduled Protestant religious services in the North County Jail.

32. Plaintiffs are informed and believe, and therefore allege on information and belief, that defendants maintain only one time slot per week for inmates to attend organized religious services and this time slot is reserved by defendants solely for the services conducted by a Protestant Fundamentalist group known as Follow Up Ministries.

33. Defendants COUNTY OF ALAMEDA, CHARLES PLUMMER, MORRIS L. HICKERSON, and DEAN COMPTON do not arrange for, facilitate or otherwise provide effective and meaningful opportunities for Roman Catholic prisoners to attend mass and participate in the sacraments of confession and communion.

34. Since October 1984, when plaintiff JACK WAYNE FRIEND was first incarcerated, there have been no scheduled Roman Catholic religious services held at the North County Jail, and there have been no masses performed by a Roman Catholic priest within the North County Jail.

35. Plaintiffs are informed and believe, and therefore allege on information and belief, that weekly bible study groups sanctioned, arranged, facilitated and provided for by defendants COUNTY OF ALAMEDA, CHARLES PLUMMER, MORRIS L. HICKERSON, and DEAN COMPTON and held within the Alameda North County Jail are conducted or overseen by Follow Up Ministries which does not allow Roman Catholic teachings to be presented therein.

36. There are no scheduled visits by Roman Catholic priests to the prisoners at the North Alameda County Jail.

37. Since October, 1984, plaintiff JACK WAYNE FRIEND has repeatedly written letters and request slips to various deputies, sergeants and prison administrators requesting that the administration schedule Roman Catholic religious services and sacraments to be performed by a Roman Catholic priest at the North County Jail. Plaintiff's requests have been denied or ignored.

38. From October 1984, through early March 1988, plaintiff JACK WAYNE FRIEND had no personal contact with a Catholic priest. In late March, 1988, he was able to see a priest but was not able to make confession to the priest because defendants failed to provide a private setting for the visit.

39. It is plaintiff FRIEND'S sincerely held belief that in order to practice his religion properly, he must participate in the sacraments of confession and holy communion administered by a priest of the Roman Catholic church.

40. Defendants' continuing denial of plaintiffs' right to possess religious articles and their continued failure to provide plaintiffs access to Roman Catholic religious services and participation in sacraments performed by a Roman Catholic priest is causing plaintiffs irreparable harm as it prevents them from outwardly manifesting their religious commitments, worshipping in accordance with the tenets of the Roman Catholic faith, and receiving the sacraments of Roman Catholicism.

41. The individual defendants herein acted with reckless or callous indifference to the rights of plaintiffs JACK WAYNE FRIEND, JEFFREY DEE GRAY, and MICHAEL WETHERN.

42. As a proximate result of the policies and acts of the defendants, plaintiffs JACK WAYNE FRIEND, JEFFREY DEE GRAY, and MICHAEL WETHERN have suffered damages, injury, and a loss of their rights guaranteed by the United States Constitution.

FIRST CLAIM FOR RELIEF
(Free Exercise of Religion – Federal)

43. Plaintiffs reallege and incorporate herein by reference each and every allegation of paragraphs 1 through 42.

44. The confiscation and continuing retention of plaintiffs' rosary beads and scapulars, defendants' practice and policy of prohibiting inmates of the Alameda North County Jail from possessing rosary beads and scapulars, and defendants' failure to provide plaintiffs with access to Roman Catholic religious services and sacraments performed by a Roman Catholic priest, violate the free exercise clause of the First Amendment as incorporated into the Fourteenth Amendment.

SECOND CLAIM FOR RELIEF
(Denial of Equal Protection – Federal)

45. Plaintiffs reallege and incorporate herein by reference each and every allegation of paragraphs 1 through 44.

46. Defendants' failure to provide for scheduled Roman Catholic masses or scheduled visits by a Roman Catholic priest while arranging for services held by Protestants violates plaintiff's right to equal protection of the law under the Fourteenth Amendment to the United States Constitution.

THIRD CLAIM FOR RELIEF
(Due Process – Federal)

47. Plaintiffs reallege and incorporate herein by reference each and every allegation of paragraphs 1 through 46.

47 [sic]. Defendants' past and continuing arbitrary treatment of plaintiffs is a denial of due process under the Fourteenth Amendment to the United States Constitution.

FOURTH CLAIM FOR RELIEF
(Declaratory Judgment 28 U.S.C. § 2201 [a])

49. Plaintiffs reallege and incorporate herein by reference each and every allegation of paragraphs 1 through 48.

50. An actual controversy exists between the parties.

51. The parties are entitled to a declaration of their rights and liabilities.

FIFTH CLAIM FOR RELIEF
(Free Exercise of Religion – State)

52. Plaintiffs reallege and incorporate herein by reference each and every allegation of paragraphs 1 through 51.

53. The confiscation and continuing retention of plaintiffs' rosary beads and scapulars, defendants' practice and policy of prohibiting the possession of rosary beads and scapulars, the failure to provide for scheduled

Roman Catholic masses and scheduled visits by a Roman Catholic priest while arranging for visits and services held by Protestants violate Article I, § 4 of the California Constitution.

SIXTH CLAIM FOR RELIEF
(Free Exercise of Religion – Pen. Code § 4027)

54. Plaintiffs reallege and incorporate herein by reference each and every allegation of paragraphs 1 through 53.

55. The confiscation and continuing retention of plaintiffs' rosary beads and scapulars and defendants' practice and policy of prohibiting inmates of the Alameda North County jail from possessing rosary beads and scapulars violates the guarantee of Cal. Pen. Code § 4027 to prisoners in county detention facilities of the opportunity to exercise religious freedom.

SEVENTH CLAIM FOR RELIEF
(Equal Protection – State)

56. Plaintiffs reallege and incorporate herein by reference each and every allegation of paragraphs 1 through 55.

57. Defendants' failure to provide for scheduled Roman Catholic masses or scheduled visits by a Roman Catholic priest while arranging for services held by Protestant clergy violates plaintiff's right to equal protection of the law under Article I, § 7 of the California Constitution.

EIGHTH CLAIM FOR RELIEF
(Due Process – State)

58. Plaintiffs reallege and incorporate herein by reference each and every allegation of paragraphs 1 through 57.

59. Defendants' past and continuing arbitrary treatment of plaintiffs is a denial of due process under Article I, § 7 of the California Constitution.

PRAYERS FOR RELIEF

WHEREFORE, plaintiffs pray for the following relief:

1. For an order certifying the class.

2. For a declaration that plaintiff JACK WAYNE FRIEND and the class he seeks to represent have a constitutionally protected right to possess rosary beads, wear cloth scapulars under their clothing, and have effective and meaningful opportunities to attend Roman Catholic mass and participate in the sacraments of confession and communion.

3. For preliminary and permanent injunctions enjoining defendants, their successors, agents, employees, and all persons working in concert or participation with them, from confiscating rosary beads and scapulars belonging to prisoners, from failing to return such articles to inmates from whom they have been confiscated, and from prohibiting possession of rosary beads and scapulars.

4. For preliminary and permanent injunctions requiring defendants to arrange for and provide effective

and meaningful opportunities for Roman Catholic prisoners to attend mass and participate in the sacraments of communion and confession within the North County Jail.

5. For compensatory damages against all defendants in an amount according to proof.

6. For punitive damages against the individual defendants in an amount according to proof.

7. For costs and reasonable attorneys fees pursuant to 42 U.S.C. § 1988.

8. For such further relief as the court deems proper.

Dated: April 18, 1988

LAW OFFICES OF
AMITAI SCHWARTZ

By: Amitai Schwartz
Amitai Schwartz